

REMARKS

Claims 1-10 are pending in the application. It is gratefully acknowledged that Claims 4 and 5 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner rejected Claims 8-10 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner has rejected Claim 1 under 35 U.S.C. §102(b) as being anticipated by Griffin (U.S. Patent 5,666,402). The Examiner has rejected Claims 11 and 12 under 35 U.S.C. §102(b) as being anticipated by Cline (U.S. Patent 4,903,298). The Examiner rejected Claims 2, 3, 6 and 7 under 35 U.S.C. §103(a) as being unpatentable over Griffin. The Examiner rejected Claim 8 under 35 U.S.C. §103(a) as being unpatentable over Griffin in view of Schmid et al. (U.S. Publication 2005/0025302). The Examiner has provisionally rejected Claims 8-12 on the ground of nonstatutory obviousness-type double patenting (ODP) over claim of copending Application No. 11/140,209.

Please amend Claim 8 as set forth herein. No new matter has been added.

Regarding the rejection of Claims 8-10 under §112, first paragraph, the Examiner states, "The specification does not support an encryption device inside a switch, and not such an encryption device is operable during a no power state of the switch." Claims 8 and 9 do not recite that the encryption device is part of any switch, but rather recite switching relays to route signals through an encryption device to an output port. This is clearly supported in the specification and drawings, and in particular at page 6, lines 6-15, and FIG. 1. In order to facilitate prosecution, Claim 8 has been amended to recite that the encryption device is an external encryption device.

Based on at least the foregoing, withdrawal of the rejection of Claims 8-10 is respectfully requested.

Regarding the rejection of Claim 1 under §102(b), the Examiner states that Griffin

anticipates each and every feature of the claim. Applicant respectfully disagrees.

Griffin discloses a fiber optic telephone line extension system. The system disclosed by Griffin teaches 2 modems, modem 10 and modem 14 as shown in FIG. 1. Modem 10 is detailed in FIG. 2 and modem 14 is detailed in FIGs. 3A-3C. Modem 10 as detailed in FIG. 2 (and its description) does not contain a relay. Relay 84 is only included in modem 14.

Based on the foregoing facts of Griffin, the rejections cannot stand.

First, Claim 1 recites that the first port of the first relay is connected to the input port. The first port of Claim 1 is equated with LINE(1) of Griffin and the first relay of Claim 1 is equated with relay 84 of Griffin. In Griffin LINE(1) (the Examiner's first port) is not connected to relay 84 (the Examiner's first relay). Griffin does not anticipate Claim 1.

Second, Claim 1 recites that the first fiber optic modem is connected to the first relay (defined as relay 84 of Griffin by the Examiner). The first fiber optic modem of Claim 1 is equated with Base Modem 10 of Griffin. In Griffin, Base Modem 10 is not connected to relay 84. Griffin does not anticipate Claim 1.

Third, Claim 1 recites a second relay (which, by definition is separate and distinct from the first relay). Relay 84 is used to anticipate both the first relay and the second relay of Claim 1. One relay cannot be used to anticipate two relays. Griffin does not anticipate Claim 1.

Additionally, Claim 1 recites a secure/non-secure bypass switch. The switch that is claimed by definition contains the elements recited in the claim. As set forth in MPEP §2111.02 "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).

The extension system of Griffin, as illustrated in FIG. 1 and its description, includes features that are extended distances from each other. Griffin does not teach or disclose a bypass switch.

Further, Claim 1 recites a second port, a third port, and a fourth port. The Examiner mistakenly alleges, “the ports of the relays 84...read on these ports.” The faulty premise is based on the mistaken assumption that there is more than one relay 84 taught by Griffin, when in fact, as set forth above, Griffin only discloses one relay 84.

It is well known that in order to anticipate a claim the reference must teach each and every element as recited in the claim. MPEP §2131. Since Griffin does not teach each and every element of Claim 1, Griffin cannot anticipate Claim 1, and the rejection under §102(b) must fail.

Based on at least the foregoing, withdrawal of the rejection of independent Claim 1 under §102(b) is respectfully requested.

Regarding the rejection of Claims 11 and 12 under §102(b), the Examiner states that Cline anticipates each and every feature of the claim. Applicant respectfully disagrees.

Cline discloses a system for providing encryption and decryption of voice and data transmissions to and from an aircraft.

Claims 11 and 12 recite 2 switch states depending on whether or not power is supplied to the switch. Claim 11 recites that signals are routed through an encryption device connected in the secure mode signal path when no power is supplied to the switch, and the signals are routed through the non-secure path when power is supplied to the switch, and Claim 12 recites that when no power is supplied to the secure/non-secure bypass switch, routing signals through the secure path and when power is supplied to the secure/non-secure bypass switch, routing signals through the non-secure path. Cline does not teach or disclose that signals are routed through 2 switch states depending on whether or not power is supplied to the switch.

Based on at least the foregoing, withdrawal of the rejection of Claims 11 and 12 under §102(b) is respectfully requested.

Regarding the rejection of Claims 2 and 3 under §103(a), the Examiner states that Griffin renders the claims unpatentable. Applicant respectfully disagrees.

On page 6 of the office action the Examiner refers to Schmid et al. as disclosing secure telephone units, where secure means use of digital encryption. The claims of the present application also use secure, and as described in the specification, secure means routing signals through an encryption device.

MPEP §2111.01 states that an applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994). This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Even if the plain meaning of secure in the context of encryption devices means anything but the use of encryption, which it does not, as illustrated by Schmid et al., the present specification clearly defines secure as using an encryption device.

The Examiner allegations that Griffin has an inherent power off state, and that no tampering to the switch can occur when power is off, and therefore the switch is secure, cannot be used to render unpatentable Claims 2 and 3.

With respect to Claim 3, the claim recites, “wherein if the switch is operating in a non-secure mode, the input of the first relay is connected to the first output of the first relay, and the

first input of the second relay is connected to the output of the second relay.” The Examiner again only cites one element, namely relay 84, to reject two relays and the connections recited in the claim. This cannot support the rejection for at least the reasons set forth above.

Based on at least the foregoing, withdrawal of the rejection of independent Claims 2 and 3 under §103(a) is respectfully requested.

Regarding the rejection of Claim 8 under §103(a), the Examiner states that Griffin in view of Schmid et al. renders the claim unpatentable. Applicant respectfully disagrees. Schmidt et al. teaches a virtual private switched telecommunications network.

Although it may be true that a combination of Griffin and Schmid et al. might produce a secure telephone communications system, this is not what is recited in Claim 8. Claim 8 recites a method of secure/non-secure switching in a secure/non-secure bypass switch.

On page 8 of the Office Action, with respect to the §112 rejection, the Examiner correctly states that Claim 8 relates to a method of switching *in a switch* and states that the encryption device is not described as being in the switch.

Applicant argued in the prior Response that the combination of Griffin and Schmid et al. does not produce a method of switching in a switch. Applicant respectfully requests that the Examiner consistently apply the term *in a switch*.

Claim 8 goes on to recite two conditions and their results, namely, “if a non-secure mode is selected, configuring relays to route the signals through at least two fiber optic modems to an output port” and “if a secure mode is selected, configuring relays to route the signals through an encryption device to said output port.” Neither of these conditions, nor their results, are either taught or disclosed by the combination of Griffin and Schmid et al.

Based on at least the foregoing, withdrawal of the rejection of independent Claim 8 under

§103(a) is respectfully requested.

Regarding the provisional ODP rejections of Claims 8-12, since there are still other outstanding rejections, Applicant reserves the right to address this issue when all of the remaining issues are resolved.

Independent Claims 1, 8, 11 and 12 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 3, 6, 7, 9 and 10, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 3, 6, 7, 9 and 10 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-12, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicant's attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", is written over the typed name.

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